IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.156/2003

M.O.H.P. & Other Institutional
Labourer's Co-operative Society Ltd.,
Near Janata Bakery,
Patrong Baina, Vasco-da-Gama. .... Petitioner.

V/s.

1. Employees' State Insurance
Corporation, a Body Corporate,
constituted under the Employees'
State Insurance Act, 1948,
having its registered Office at
Panchdeep Bhavan,
EDC, Plot No.23, Patto, Panaji,Goa.

2. Regional Director,
Employees' State Insurance
Corporation, Panchdeep Bhavan,
EDC Plot NO.23,
Patto, Panaji, Goa.

3. Shri K. Ramkrishanan,
Recovery Officer,
Regional Office, Employees'
State Insurance Corporation,
having its Office at Panchdeep
Bhavan, EDC, Plot No.23,
Patto, Panaji, Goa.

4. Branch Manager,
Goa State Co-operative Bank Ltd.,
Vasco Branch,
Vasco-da-Gama, Goa.

5. Senior Manager,
Centurion Bank Ltd.,
Ground Floor, Melquiedes Bldg.,
Joseph Vaz Road,
Vasco da Gama, Goa. .... Respondents.

Mr. E. Dias, Advocate for the petitioner.

Mrs. A.A. Agni, Advocate for respondents No.1 and 2.

Mr. S.R. Rivonkar, Advocate for respondent No.4.

CORAM : F.I. REBELLO, J.

DATE : 19TH JUNE, 2003.

ORAL JUDGMENT:

Rule. Respondents waive service. Heard forthwith.

2. Being aggrieved by the order of respondent No.1, an E.S.I. Appeal was preferred. Right to maintain an appeal is subject to requirement of Section 75(2-B) of the Employees' State Insurance Act. That contemplates deposit of 50 % of the amount claimed. The petitioner herein applied for waiver of deposit. That was dismissed by the Court by order dated 8.3.2002. Against that, an appeal was preferred before this Court, which was dismissed by order dated 26/6/2002. S.L.P. preferred against that order was dismissed by the Apex Court on 29.8.2002.

In the meantime, the main appeal itself came to be disposed of, as the petitioner was not represented when the matter came up for hearing on 26.4.2002. The petitioner thereafter applied on 16.5.2002 for restoration of the main appeal. That was also dismissed by Order of 13.9.2003, against which the present petition.

In the meantime, during the pendency of this petition it seems that proceedings for recovery were

initiated by respondent No.1 and in pursuance of that, amounts of the petitioner lying with the Goa State Co-operative Bank Ltd., Vasco-da-Gama, and Centurion Bank Ltd., Vasco-da-Gama have been attached. In other words, today the respondent No.1, apart from 50 %, is practically protected, in so far as the total amount claimed.

3. The present petition has been filed by the petitioner on various grounds. It is not necessary to go into the controversy, considering the fact that the respondent No.1 has now been secured. If that be the case, in my opinion, an opportunity can be given to the petitioner herein to prove its case before the E.S.I.S. Court. Considering the above, the ends of justice would be met if the order dated 13.9.2002 is set aside and the application of 16.5.2002 is allowed, thereby setting aside the order of 26.4.2002 and restoring the appeal itself. In the light of that, the following Order.

4. The Order dated 13.9.2002 is set aside. The application for restoration dated 16.5.2002 is allowed. The order dated 26.4.2002 dismissing the main appeal is set aside. The appeal is restored. The amounts attached from the Goa State Co-operative Bank Ltd., and the Centurion Bank Ltd., will continue to be attached

till hearing and final disposal of the appeal and for a period of twelve weeks thereafter. Rule accordingly. There shall be no order as to costs.

F.I. REBELLO, J.

ssm.